REMARKS

Claims 1-88 are pending in this application. By the Office Action, claims 1-73, 76-78, 84, 87 and 88 are withdrawn from consideration; the title is objected to; and claims 74, 75, 79-83, 85 and 86 are rejected under 35 U.S.C. §103 and for obviousness-type double patenting. In view of the following remarks, reconsideration and allowance are respectfully requested.

The Office Action references, but has not issued rejections on the basis of, the disclosures of U.S. Patent No. 6,451,294; U.S. Patent No. 6,663,852; U.S. Patent Application No. 11/641,785; U.S. Patent Application No. 10/743,455; U.S. Patent Publication No. 2002/0012683; and U.S. Patent No. 5,948,393. Therefore, Applicants do not address the disclosures of these references.

The Information Disclosure Statement filed October 6, 2004, is objected to for improperly listing U.S. patent applications, and for including foreign-language references. Applicants respectfully submit that the foreign-language references should have been considered of record, as their citation fully complied with the requirements of 37 C.F.R. §1.56 and §1.97. However, because English-language equivalents to the foreign-language references have been considered of record, Applicants understand that no further action is required. Furthermore, Applicants understand that the cited U.S. patent applications have been lined-through on the Form PTO-1449 because such references will not be listed on the cover of any eventual U.S. Patent, but understand that the referenced applications have been disclosed to and considered by the Examiner.

I. Restriction Requirement

Applicants affirm the election of Group V, claims 74, 75, 79-86; affirm the election of the coloring agent species as being brown, yellow or black iron oxide, coated with perfluoroalkyl phosphate; and affirm the election of mica-brown iron oxide as the reflective

particles species, all with traverse. For all of the reasons previously set forth, reconsideration and withdrawal of the Restriction and Election of Species Requirements are respectfully requested.

II. Objection to the Title

The Office Action objects to the title of the invention as not being descriptive. The title has been amended. Accordingly, reconsideration and withdrawal of the objection are respectfully requested.

III. Rejection under 35 U.S.C. §103

The Office Action rejects claims 74, 75, 79-83, 85 and 86 as having been obvious over U.S. Patent No. 5,463,009 to Okada et al. ("Okada") in view of U.S. Patent No. 6,451,294 to Simon ("Simon") and U.S. Patent No. 6,818,205 to Reinehr et al. ("Reinehr"). The rejection is respectfully traversed.

Claims 74, 75, 79, 80, 85 and 86 are directed to a method of making up dark skin by applying a composition comprising at least one coloring agent and reflective particles. Claims 81-83 are directed to a method for lightening dark skin by using a composition comprising at least one coloring agent and reflective particles. Moreover, claims 74 and 81 further require that the composition has a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50. Likewise, claims 75 and 82 further require that the composition has a reflectance ranging from 10% to 45% in the range of from 600 to 680 nm. None of Okada, Simon, or Reinehr, alone or in combination, teach or suggest at least these features of the claimed invention.

A. Making up/lightening dark skin using a composition comprising at least one coloring agent and reflective particles

Claims 74, 75, 79, 80, 85 and 86 are directed to a method of making up dark skin by applying a composition comprising at least one coloring agent and reflective particles. Claims 81-83 are directed to a method for lightening dark skin by using a composition comprising at least one coloring agent and reflective particles. However, none of Okada, Simon and Reinehr, alone or in combination, teach or suggest at least these features of the claimed invention.

Okada teaches making long-lasting cosmetics by using a fluorine-modified silicone compound that has a polymerization degree of from 1 to 400, and contains at least one siloxane unit. Okada's composition is highly water- and oil-repellant, and feels good on the user's skin. However, Okada does not teach or suggest a method specifically for making up dark skin using a composition comprising a coloring agent and reflective particles, as required by claims 74, 75, 79, 80, 85 and 86. Nor does Okada teach or suggest specifically lightening dark skin by using a composition comprising at least one coloring agent and at least reflective particles, as required by claims 81-83. In fact, the Office Action admits, on page 6, that "Okada et al. do not teach specifically... a method for making up dark skin or lightening dark skin." Simon and Reinehr do not overcome these deficiencies of Okada.

Simon teaches a first, goniochromatic pigment composition, which is intended to form a base layer, and a second, conventional pigment composition being intended to form a surface layer comprising decorative motifs. Simon identifies a problem that "conventional makeup products... allow the creating of decorative effects with colored motifs: drawings, chequered patterns, letters, etc... [that] are visible at any viewing angle, so making the makeup 'static.'" See column 1, lines 52-55. Thus, Simon does not teach or suggest making up or lightening dark skin, but instead, teaches generally creating decorative motifs on skin,

without regard to the user's skin tone or color. In fact, the Office Action admits, on page 7, that "Simon does not teach making up dark skin."

Reinehr teaches the use of a polymeric carrier material treated with a fluorescent *whitening agent*, for lightening human skin. See abstract. Reinehr's invention is thus directed to a *chemical* change to the appearance of the skin by using a *whitening agent*, to whiten or lighten skin pigmentation. However, Reinehr does not teach or suggest making up/lightening dark skin using a composition comprising at least one *coloring agent* and reflective particles.

In contrast, the claimed invention is directed to making up/lightening dark skin by *temporarily, physically* changing the appearance of skin by applying to it a *coloring agent*. The specification states that by using the method of the claimed invention, the user's face is made up with "uniformity of coloration between the various areas of the face, especially the forehead, the bags under the eyes and the cheekbones, and a lightening effect that is virtually or even totally free of a grayish effect," which "results in a more natural makeup effect on the individual." See paragraph [0010]. Accordingly, the claimed invention temporarily deposits color pigments on the user's skin, until the pigment is removed (by washing it off, or with makeup remover, etc.). In contrast, Reinehr teaches permanently depigmenting the skin, by oxidizing or reducing the melanin in the skin. See Column 1, lines 38-52.

Thus, it would not have been obvious for one of ordinary skill in the art, in view of the teachings of the cited references, to substitute Reinehr's composition for permanently changing the pigmentation of the skin into the temporary cosmetic compositions of Okada and Simon to practice the claimed invention of making up/lightening dark skin using a composition comprising at least one coloring agent and reflective particles. Moreover, none of Okada, Simon and Reinehr, alone or in combination, teach or suggest making up/lightening dark skin using a composition comprising at least one coloring agent and reflective particles. For at least this reason, any combination of the cited references would

not have rendered obvious the claimed invention. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

B. A composition having a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50, or a composition having a reflectance ranging from 10% to 45% in the range of from 600 to 680

Claims 74 and 81 specifically require a method using a composition having a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50. Claims 75 and 82 specifically require a method using a composition having a reflectance ranging from 10% to 45% in the range of from 600 to 680 nm. However, none of Okada, Simon and Reinehr, alone or in combination, teach or suggest at least these features of the claimed invention.

As described in the specification in paragraphs [0008] and [0009], the claimed invention is specifically directed toward producing compositions of foundation type for making up dark skins that, when applied to a user's skin, creates a natural look, while minimizing an undesired grayish-colored appearance. Such grayish-colored effect may be attributable to the presence of white particles in the foundation. Accordingly, selecting a composition based on its colorimetric characteristics, such as hue angle, saturation, and reflectance, both: 1) promotes the selection of a composition that is natural-looking when applied on the user's skin; and 2) helps prevent the selection of a composition that creates a grayish and dull appearance. By selecting and applying a composition having a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50, as required in claims 74 and 81, or a composition having a reflectance ranging from 10% to 45% in the range of from 600 to 680 nm, as required in claims 75 and 82, dark skin can be made up or lightened to create an evenness in color without a grayish appearance.

Because Okada, Simon and Reinehr are silent as to a composition having a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50, as required in claims 74 and 81, or a composition having a reflectance ranging from 10% to 45% in the range of from

600 to 680 nm, as required in claims 75 and 82, none of Okada, Simon and Reinehr, alone or in combination, teach or suggest using a composition having these properties. Moreover, the hue angle and saturation ranges required by claims 74 and 81, and reflectance and wavelength ranges required by claims 75 and 82, are specifically selected for making up/lightening *dark skin*. However, as discussed above, none of Okada, Simon and Reinehr suggest or teach making up/lightening dark skin other than by permanently depigmenting the skin. Therefore, and because compositions can clearly be made having colorimetric properties outside of the claimed ranges, a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50, as required in claims 74 and 81, or a reflectance ranging from 10% to 45% in the range of from 600 to 680 nm, as required in claims 75 and 82, cannot be "reasonably construed to be inherent characteristics of the composition [of the cited references]," as the Office Action alleges on page 5.

It would not have been obvious for one of ordinary skill in the art, in view of the teachings of the cited references, to have modified the disclosures of the cited references to use a composition having a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50, as required in claims 74 and 81, or a composition having a reflectance ranging from 10% to 45% in the range of from 600 to 680 nm, as required in claims 75 and 82. For at least this reason, any combination of the cited references would not have rendered obvious the claimed invention. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

IV. Nonstatutory Obviousness-Type Double Patenting

The Office Action provisionally rejects claims 74, 75, 79-83, 85 and 86 on the ground of non-statutory obviousness-type double patenting over claims 16 and 17 of co-pending U.S. Patent Application No. 10/743,521, and also over claims 32-34 of co-pending U.S. Patent Application No. 11/172,977. The rejections are respectfully traversed.

U.S. Patent Application No. 10/743,521 has been abandoned, thereby rendering the provisional rejection based on U.S. Patent Application No. 10/743,521 moot. Moreover, claims 32-34 of co-pending U.S. Patent Application No. 11/172,977 do not teach or suggest all of the limitation of claims 74, 75, 79-83, 85 and 86.

As discussed above, claims 74, 75, 79, 80, 85 and 86 specifically require a method of making up dark skin by applying a composition comprising a coloring agent and reflective particles; claims 81-83 specifically require a method for lightening dark skin by using a composition comprising at least one color pigment and reflective particles; claims 74 and 81 require use of a composition having a hue angle h ranging from 40° to 70°, and a saturation C* ranging from 20 to 50; and claims 75 and 82 require use of a composition having a reflectance ranging from 10% to 45% in the range of from 600 to 680 nm. However, none of claims 32-34 of co-pending U.S. Patent Application No. 11/172,977 teach or suggest at least these features of the claimed invention. For at least these reasons, claims 32-34 of co-pending U.S. Patent Application No. 11/172,977 would not have rendered obvious the claimed invention.

Accordingly, reconsideration and withdrawal of the rejections are respectfully requested.

V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,

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WPB:HHS/kxs

Attachment:
Petition for Extension of Time

November 23, 2007

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